

Decision 05-02-054

February 24, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Gas Company for authority to update its gas revenue requirement and base rates.
(U 904 G)

Application 02-12-027
(Filed December 20, 2002)

Application of San Diego Gas & Electric Company for authority to update its gas and electric revenue requirement and base rates.
(U 902 M)

Application 02-12-028
(Filed December 20, 2002)

Order Instituting Investigation on the Commission's Own Motion into the Rates, Operations, Practices, Service and Facilities of Southern California Gas Company and San Diego Gas & Electric Company.

Investigation 03-03-016
(Filed March 13, 2003)

ORDER GRANTING REHEARING OF DECISION (D.) 04-10-012,
VACATING D.04-10-012 AND D.03-12-058, AND DENYING
ELIGIBILITY FOR INTERVENOR COMPENSATION

I. SUMMARY

By this Order, we grant the Application for Rehearing of Decision (D.) 04-10-012 ("Decision") filed by Southern California Edison Co ("SCE"), vacate D.04-10-012 and D.03-12-058, and deny Local 483 Utility Workers Union of America ("Local 483") eligibility for intervenor compensation.

II. BACKGROUND

In D.04-10-012, we affirmed our finding in D.03-12-058 that Local 483 is eligible to request intervenor compensation under Public Utilities Code section 1804.¹ We reached this conclusion by determining that Local 483 meets the statutory definition of “customer” pursuant to Public Utilities Code section 1802(b).

Southern California Gas Company (“SoCalGas”) filed Application (A.) 02-12-027 and San Diego Gas & Electric Company (“SDG&E”) filed A.02-12-028 for authority to update their gas revenue requirement and base rates on December 20, 2002. The Assigned Administrative Law Judge (“ALJ”) consolidated the two applications on January 22, 2003. We initiated Investigation (I.) 03-03-016 for an order instituting investigation on our own motion into the rates, operations, practices, service and facilities of SoCalGas and SDG&E on March 13, 2003. We are handling these two applications and investigation together in the same proceeding (hereinafter collectively referred to as “proceeding”).

Local 483, as a party in this proceeding, filed a notice of intent to claim compensation (“NOI”) on March 29, 2003 pursuant to the intervenor compensation statutes, sections 1801-1812 (“Intervenor Compensation Statute”). Local 483 filed an amended NOI on May 20, 2003 to update its itemized estimates of compensation.² In its NOI, Local 483 states that it is a non-profit labor organization of 250 members who pay monthly dues, with no full-time staff, regular employees, or office clerical help. (Amended NOI, p. 3.)³

The Assigned ALJ to the proceeding mailed a Draft Decision Denying Local 483 Eligibility for Intervenor Compensation on November 18, 2003. This Draft Decision was never issued. Rather, on December 24, 2003, we issued D.03-

¹ Hereinafter, all references are to the Public Utilities Code, unless otherwise noted.

² With the exception of updates of itemized estimates of cost, the two NOIs are virtually identical.

³ All citations to Local 483’s NOI are to unnumbered pages.

12-058, finding Local 483 eligible to request intervenor compensation under section 1804.⁴ We reached this conclusion by determining that Local 483 meets the statutory definition of “customer” pursuant to section 1802(b). We also held that Local 483 demonstrated significant financial hardship according to section 1802(g). We concluded that D.03-12-058 was in accord with our 1998 *Order Instituting Rulemaking of the Commission’s Intervenor Compensation Program; Order Instituting Investigation on the Commission’s Intervenor Compensation Program*, D.98-04-059, 1998 Cal. PUC LEXIS 429 (hereinafter referred to as “*Intervenor Compensation Order*”).

SCE applied for rehearing of D.03-12-058 on January 23, 2004.⁵ SCE presented three arguments to support its contention that we violated state law because we acted in excess of our authority: (1) Local 483 is not a representative organization because it does not represent people in their capacities as ratepayers; (2) Local 483 has not met the statutory standard for “significant financial hardship;” and (3) we have unlawfully presumed labor unions eligible for intervenor compensation. We denied SCE’s request for rehearing in D.04-10-012, issued on October 13, 2004.

SCE filed a timely application for rehearing of D.04-10-012⁶ on November 12, 2004, and made the following arguments: (1) the Decision improperly overruled the *Intervenor Compensation Order* without giving parties notice and an opportunity to be heard; (2) D.04-10-012 improperly finds that eligibility is not a hurdle to compensation for participation in Commission proceedings; (3) the Decision fails to address SCE’s specific arguments regarding Local 483’s obligation to show “customer” status; and (4) D.04-10-012 failed to

⁴ Typically, the ALJ rules in consultation with the assigned Commissioner on the eligibility of an interested party that files a NOI. Because our Rules of Practice and Procedure do not provide for interlocutory appeal of such rulings, this matter was referred directly to the Commission so that Local 483 may have a definitive order of the Commission.

⁵ SCE is an intervenor in this proceeding.

⁶ By accepting SCE’s application for rehearing of D.04-10-012, we reopened the issue of the finality of D.03-12-058.

address SCE's argument regarding Local 483's "significant financial hardship" showing.

We have considered SCE's application for rehearing because SCE contends that D.04-10-012 materially alters D.03-12-058 without giving proper notice. In particular, we may have changed the eligibility criteria for intervenor compensation in D.04-10-012 in a manner not previously articulated in D.03-12-058.⁷

III. DISCUSSION

We have considered each and every allegation raised in SCE's application for rehearing, and we find merit to SCE's claim that D.04-10-012 improperly finds that eligibility is not a hurdle to compensation for participation in Commission proceedings. Section 1802(b)(1) requires that participants seeking to be found eligible for intervenor compensation qualify under one of the following three definitions of customer:

(A) A participant representing consumers, customer, or subscribers of any electrical, gas, telephone, telegraph or water corporation that is subject to the jurisdiction of the commission (hereinafter "Category 1 customer").

(B) A representative who has been authorized by a customer (hereinafter "Category 2 customer").

(C) A representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers, or to represent small commercial customers who receive bundled electric service from an electrical corporation (hereinafter "Category 3 customer").

⁷ On November 12, 2004, the same day it filed its application for rehearing of D.04-10-012, SCE filed a petition for writ of review of D.03-12-058 with the Court of Appeal, Second Appellate District, Division 1. Because the Court of Appeal and the Commission were both confronted with similar issues in this proceeding at the same time, the Court and SCE agreed that the petition for writ of review would be held in abeyance pending the Commission's disposition of SCE's application for rehearing of D.04-10-12.

(Pub. Util. Code, § 1802(b)(1).) On rehearing and further consideration, we determine that Local 483 does not meet the criteria to be a Category 1 customer because it is not an actual customer of SoCalGas or SDG&E, nor is it a self-appointed representative. (*See* Pub. Util. Code, § 1802(b)(1)(A).) Local 483 is not eligible as a Category 2 customer because Local 483 did not provide evidence that it has been selected by any ratepayer to represent ratepayer interests, as required by the intervenor compensation statutes, and Local 483 does not have the specific power to represent ratepayer interests. (*See* Pub. Util. Code, § 1802(b)(1)(B).) Lastly, Local 483 does not qualify as a Category 3 customer because Local 483 is not authorized to represent the interests of residential customers in its articles of incorporation or bylaws.⁸ (*See* Pub. Util. Code, § 1802(b)(1)(C).)

For these reasons, Local 483 cannot be deemed eligible for intervenor compensation. We therefore do not reach SCE's other allegations of error because we grant rehearing of D.04-10-012, vacate D.04-10-012 and D.03-12-058, and hold that Local 483 is not eligible for intervenor compensation because it is not a customer pursuant to section 1802(b).

IV. CONCLUSION

We have carefully considered all of the arguments presented by SCE and are of the opinion that good cause for rehearing has been shown.

For the reasons stated above, we grant rehearing of D.04-10-012, vacate D.04-10-012 and D.03-12-058, and deny Local 483 eligibility for intervenor compensation.

⁸ We note that the Constitutions of both organizations were not originally attached to the NOIs filed by Local 483. However, this deficiency was cured when they were later provided to the assigned ALJ, who considered them as part of the record in drafting his decision denying Local 483's eligibility request. It is not clear, however, that they were provided to other parties to the proceeding. Therefore, we attach Local 483's and UWUA's Constitutions to this decision.

Therefore **IT IS ORDERED** that:

1. Rehearing of D.04-10-012 is hereby granted.
2. D.04-10-012 and D.03-12-058 are vacated.
3. Local 483 is not eligible for intervenor compensation.

The order is effective today.

Dated February 24, 2005, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
DIAN M. GRUENEICH
SUSAN P. KENNEDY
Commissioners